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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,181	09/28/2001	Bobby D. Poe JR.	56.0582	5961

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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT PAPER NUMBER

2128

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/967,181

Applicant(s)

POE, BOBBY D.

Examiner

Russell Frejd

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6.10.02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Examination of Application #09/967,181***

1. Claims 1-8 of application 09/967,181, filed on 28-September-2001, are presented for examination.

***Claim Objections under 37 CFR 1.75(d)(1)***

2. Claims 1 and 5 are objected to under 37 CFR 1.75(d)(1), wherein --

The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. (See 1.58(a))

The following is a list of the specific objections:

In claim 1, the phrase (line 3) "data provides a quantitative" is understood by the examiner to mean "data *which* provides a quantitative" (emphasis added). Also, on line 4, the examiner understands the term "commingled reservoir" to be "commingled reservoirs".

In claim 5, the phrase "separated in to defined intervals" is understood by the examiner to mean "separated *into* defined intervals".

***Claim Rejections under 35 U.S.C. § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

- 3.1 Method claim 1 is rejected for reciting a process that is not directed to the technological arts. This claim is directed at a method for providing production optimization of reservoir completions having a plurality of completed intervals via available production analysis and

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production logging data (which) provides a quantitative analysis procedure for reservoir and fracture properties using commingled reservoir(s). To be statutory, the utility of an invention must be within the technological arts. *In re Musgrave*, 167 USPQ 280, 289-90 (CCPA, 1970). The definition of "technology" is the "application of science and engineering to the development of machines and procedures in order to enhance or improve human conditions, or at least to improve human efficiency in some respect." (Computer Dictionary 384 (Microsoft Press, 2d ed. 1994)). The limitations recited in claim 1 contain no language suggesting that claim 1 is intended to be within the technological arts. However, please note the method steps of claim 1 recited as part of a "computer-implemented method" would be considered as directed to the technological arts.

### ***Double Patenting Rejections***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.3218 may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**4.1** Claims 1 and 3-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 and 9 of U.S. Patent Application No. 09/952,656. This is a provisional rejection because the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the present invention and the application are directed to a method for providing production optimization of reservoir completions having a plurality of completed intervals via available production analysis and production logging data provides a quantitative analysis procedure for reservoir and fracture properties (using/of a) commingled reservoir (Preamble from claim 1 of each application). Furthermore, the claims noted above of the present invention and the application are each directed to concepts for measuring pressures for specific reservoir zones, selecting a traverse model, and computing comparing and modeling midzone pressures using the traverse model and measured parameters. For at least these reasons, one of ordinary skill would have found it obvious that the methods of each application for providing production optimization of reservoir completions having a plurality of completed intervals via available production analysis and production logging data provides a quantitative analysis procedure for reservoir and fracture properties (using/of a) commingled reservoir are not patentably distinct in so far as the specifications of each application support the identical critical features noted above.

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***Claim Rejections under 35 U.S.C. § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.1 Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by the article authored by Osman, entitled *Pressure Analysis of a Fractured Well in Multilayered Reservoirs*, Vol. 9, No. 1, February 1993, pages 49-66.

5.2 Osman disclosed the invention as claimed, including a mathematical model which presents the pressure behavior of a fractured well located in multilayered reservoirs (Abstract) comprising:

a measured pressure [p. 58, col. 2](applicant's measuring pressure for specific zones in a reservoir);

a pressure model [p. 51, equation 3](applicant's selecting a pressure traverse model, computing midzone pressures using the traverse model, and modeling the bottomhole pressure of the reservoir);

obtaining a match [p. 58, col. 2](applicant's comparing the computed midzone pressures with the measured pressures);

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matching field data to a plurality of type curves [p. 59, col. 2 to p. 60, col. 1](applicant's comparing computed pressures to historic data); and evaluating properties and pressure results of a plurality of systems [p. 60, col. 2](applicant's determining/selecting a recompletion process for maximizing production).

### ***Claim Objections***

6. Claims 2-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response Guidelines***

7. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

**7.2 Any response to the Examiner in regard to this non-final action should be**

**directed to:** Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, or the examiner's supervisor, Jean Homere, telephone number (571) 272-3780. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

**mailed to:** Commissioner of Patents and Trademarks  
P.O. Box 1450, Alexandria, VA 22313-1450

**or faxed to:** (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

**Date:** 8-August-2005



**RUSSELL FREJD  
PRIMARY EXAMINER**